

APR 08 2008

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

OLIN WOOTEN,)	
Plaintiff,)	Civil Action No. 1:07cv00052
)	
v.)	<u>ORDER</u>
)	
ROBERT C. LIGHTBURN,)	By: GLEN M. WILLIAMS
Defendant.)	SENIOR UNITED STATES DISTRICT JUDGE

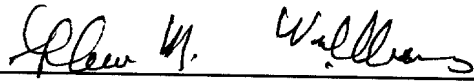
This case is before the court on the defendant's Motion for Summary Judgment on Plaintiff's Second Amended Complaint, (Docket Item No. 52), ("Lightburn's Motion"), which was filed on January 25, 2008, and the plaintiff's Motion for Summary Judgment, (Docket Item No. 58), ("Wooten's Motion"), which was filed on February 11, 2008. The case was referred pursuant to 28 U.S.C. § 636(b)(1)(B), to the Honorable Pamela Meade Sargent, United States Magistrate Judge. On March 28, 2008, the Magistrate Judge filed a report, (Docket Item No. 62), ("the Report"), recommending that Lightburn's Motion be granted as to Count II of the Second Amended Complaint and denied as to Counts III and IV. In addition, the Magistrate Judge recommended that Wooten's Motion be denied in its entirety. Objections to the Magistrate Judge's Report were timely filed by the defendant on April 3, 2008, (Docket Item No. 64), and by the plaintiff on April 4, 2008, (Docket Item No. 65). Upon review of the objections to the Report, and all other relevant filings, the objections are hereby **OVERRULED** and the Magistrate Judge's Report shall be **ACCEPTED**.

For the reasons detailed in the Magistrate Judge's Report and in this Order,

Lightburn's Motion is hereby **GRANTED** as to Count II of the Second Amended Complaint, and **DENIED** as to Counts III and IV. Furthermore, Wooten's Motion is hereby **DENIED** in its entirety. The Clerk is directed to enter this Order and send certified copies to all counsel of record.

The parties are advised that this case is set for trial May 6 through May 7, 2008, in Abingdon, Virginia. Pursuant to Federal Rule of Civil Procedure 39(c), "[i]n an action not triable of right by a jury, the court . . . on its own . . . may try any issue with an advisory jury." Therefore, because there are material issues of fact involved in this case, the undersigned is of the opinion that it is appropriate to allow a jury to hear the disputed facts.

ENTERED: This 8th day of April, 2008.

A handwritten signature in cursive script, reading "Glen M. Williams", is written over a horizontal line.

**THE HONORABLE GLEN M. WILLIAMS
SENIOR UNITED STATES DISTRICT JUDGE**